

## § 150.401

notifies the responsible entity in writing of any penalty that has been assessed and of the means by which the responsible entity may satisfy the judgment. The responsible entity has no right to appeal a penalty with respect to which it has not requested a hearing in accordance with § 150.405 unless the responsible entity can show good cause, as determined under § 150.405(b), for failing to timely exercise its right to a hearing.

### Subpart D—Administrative Hearings

#### § 150.401 Definitions.

In this subpart, unless the context indicates otherwise:

*ALJ* means administrative law judge of the Departmental Appeals Board of the Department of Health and Human Services.

*Filing date* means the date postmarked by the U.S. Postal Service, deposited with a carrier for commercial delivery, or hand delivered.

*Hearing* includes a hearing on a written record as well as an in-person or telephone hearing.

*Party* means CMS or the respondent.

*Receipt date* means five days after the date of a document, unless there is a showing that it was in fact received later.

*Respondent* means an entity that received a notice of proposed assessment of a civil money penalty issued pursuant to § 150.343.

#### § 150.403 Scope of ALJ's authority.

(a) The ALJ has the authority, including all of the authority conferred by the Administrative Procedure Act, to adopt whatever procedures may be necessary or proper to carry out in an efficient and effective manner the ALJ's duty to provide a fair and impartial hearing on the record and to issue an initial decision concerning the imposition of a civil money penalty.

(b) The ALJ's authority includes the authority to modify, consistent with the Administrative Procedure Act (5 U.S.C. 552a), any hearing procedures set out in this subpart.

(c) The ALJ does not have the authority to find invalid or refuse to follow Federal statutes or regulations.

## 45 CFR Subtitle A (10–1–08 Edition)

#### § 150.405 Filing of request for hearing.

(a) A respondent has a right to a hearing before an ALJ if it files a request for hearing that complies with § 150.407(a), within 30 days after the date of issuance of either CMS's notice of proposed assessment under § 150.343 or notice that an alternative dispute resolution process has terminated. The request for hearing should be addressed as instructed in the notice of proposed determination. "Date of issuance" is five (5) days after the filing date, unless there is a showing that the document was received earlier.

(b) The ALJ may extend the time for filing a request for hearing only if the ALJ finds that the respondent was prevented by events or circumstances beyond its control from filing its request within the time specified above. Any request for an extension of time must be made promptly by written motion.

#### § 150.407 Form and content of request for hearing.

(a) The request for hearing must do the following:

(1) Identify any factual or legal bases for the assessment with which the respondent disagrees.

(2) Describe with reasonable specificity the basis for the disagreement, including any affirmative facts or legal arguments on which the respondent is relying.

(b) The request for hearing must identify the relevant notice of assessment by date and attach a copy of the notice.

#### § 150.409 Amendment of notice of assessment or request for hearing.

The ALJ may permit CMS to amend its notice of assessment, or permit the respondent to amend a request for hearing that complies with § 150.407(a), if the ALJ finds that no undue prejudice to either party will result.

#### § 150.411 Dismissal of request for hearing.

An ALJ will order a request for hearing dismissed if the ALJ determines that:

(a) The request for hearing was not filed within 30 days as specified by § 150.405(a) or any extension of time